

MAINE STATE LEGISLATURE

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Amendment Name: Amendment CA (H-870) (LD 1684 2020)

Date: 9/1/2020

Date: (Filing No. H-)

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND SPECIAL SESSION

COMMITTEE AMENDMENT " " to H.P. 1208, L.D. 1684, Bill, "An Act To Clarify the Right to Counsel for Juveniles and Improve Due Process for Juveniles"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 15 MRSA §3003, sub-§14, as enacted by PL 1977, c. 520, §1, is amended to read:

14. Juvenile. "Juvenile" means any a person who has not attained the age of 18 years, and a person 18 years of age or older during the period of a disposition that includes probation or commitment to a Department of Corrections juvenile facility who was adjudicated before the age of 18.

Sec. 2. 15 MRSA §3101, sub-§2, as amended by PL 2019, c. 525, §9, is further amended to read:

2. Juvenile Court jurisdiction.

A. The Juvenile Court shall have has exclusive original jurisdiction, subject to waiver of jurisdiction as provided in subsection 4, of proceedings in which a juvenile is alleged to have committed a juvenile crime, as defined in section 3103.

This paragraph is repealed October 1, 2021.

A-1. Beginning October 1, 2021, the Juvenile Court has exclusive original jurisdiction, subject to waiver of jurisdiction as provided in subsection 4, of proceedings in which a juvenile is alleged to have committed a juvenile crime, as defined in section 3103, and the juvenile had attained 12 years of age at the time the juvenile crime is alleged to have been committed.

C. The Juvenile Courts have Court has jurisdiction over all petitions brought under Title 34-A, chapter 9, subchapter 7 pertaining to juveniles who have been adjudicated as having committed juvenile crimes in other states, but who are found within the territorial jurisdiction of the State.

COMMITTEE AMENDMENT

1 D. ~~The Juvenile Courts~~ Court has exclusive original jurisdiction over
2 proceedings in which an adult is alleged to have committed a juvenile crime before
3 attaining 18 years of age. For purposes of a proceeding under this paragraph, the
4 adult is ~~considered~~ deemed a juvenile.

5 This paragraph is repealed October 1, 2021.

6 D-1. Beginning October 1, 2021, the Juvenile Court has exclusive original
7 jurisdiction over proceedings in which an adult is alleged to have committed a
8 juvenile crime after having attained 12 years of age and before attaining 18 years of
9 age. For purposes of a proceeding under this paragraph, the adult is deemed a
10 juvenile.

11 E. ~~The Juvenile Courts shall have~~ Court has jurisdiction concurrent with the District
12 Courts over petitions for emancipation brought under section 3506-A.

13 F. Beginning October 1, 2021, a juvenile who had not attained 12 years of age at the
14 time of the juvenile's alleged juvenile crime is not subject to the jurisdiction of the
15 Juvenile Court. Notwithstanding Title 17-A, section 10-A, subsection 1, a criminal
16 proceeding may not be commenced based on conduct committed by a juvenile who
17 had not attained 12 years of age.

18 **Sec. 3. 15 MRSA §3203-A, sub-§5**, as amended by PL 2003, c. 706, Pt. A, §§2
19 and 3, is further amended by to read:

20 **5. Detention hearing.** Upon petition by a juvenile community corrections officer
21 who ordered the detention or an attorney for the State who ordered the detention, the
22 Juvenile Court shall review the decision to detain a juvenile within 48 hours following the
23 detention, excluding Saturday, Sunday and legal holidays, except that if a juvenile is
24 detained pursuant to subsection 7, paragraph B-5, the Juvenile Court shall review the
25 decision to detain the juvenile within 24 hours following the detention, excluding
26 Saturday, Sunday and legal holidays. When a petition to review detention is filed, the
27 court shall assign counsel to represent the juvenile. The assignment must be reviewed at
28 the juvenile's first appearance before the court. If a juvenile petition with charges based
29 on the conduct at issue in the detention hearing is filed, the assignment continues with
30 respect to the juvenile petition, but must be reviewed at the juvenile's first appearance on
31 the juvenile petition.

32 A. A detention hearing must precede and must be separate from a bind-over or
33 adjudicatory hearing. Evidence presented at a detention hearing may include
34 testimony, affidavits and other reliable hearsay evidence as permitted by the court
35 and may be considered in making any determination in that hearing.

36 B. Following a detention hearing, a court shall order a juvenile's release, in
37 accordance with subsection 4, unless it finds, by a preponderance of the evidence,
38 that continued detention is necessary to meet one of the purposes of detention
39 provided in that subsection. The Juvenile Court shall ensure, by appropriate order,
40 that any such continued detention is otherwise in accordance with the requirements of
41 subsection 4. The court may order that detention be continued pending further
42 appearances before the court or pending conditional release to a setting satisfactory to
43 the juvenile community corrections officer.

1 C. Continued detention or conditional release may not be ordered unless a Juvenile
2 Court Judge or justice of the peace has determined pursuant to subsection 4-A or the
3 Juvenile Court determines at the detention hearing that there is probable cause to
4 believe that the juvenile has committed a juvenile crime.

5 D. When a court orders detention or a conditional release that authorizes, even
6 temporarily, the juvenile's removal from the juvenile's home, the court shall
7 determine whether reasonable efforts have been made to prevent or eliminate the
8 need for removal of the juvenile from the juvenile's home or that no reasonable
9 efforts are necessary because of the existence of an aggravating factor as defined in
10 Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's
11 home would be contrary to the welfare of the juvenile. This determination does not
12 affect whether the court orders detention or a conditional release, which continues to
13 be governed by the other provisions of this section.

14 **Sec. 4. 15 MRSA §3301, sub-§6**, as amended by PL 2011, c. 580, §1, is further
15 amended to read:

16 **6. Review by attorney for the State.** If the juvenile community corrections officer
17 decides not to request the attorney for the State to file a petition, the juvenile community
18 corrections officer shall inform the attorney for the State, the complainant, the law
19 enforcement officer and the victim of the decision and of the reasons for the decision as
20 soon as practicable. The juvenile community corrections officer shall advise the
21 complainant, the law enforcement officer and the victim that they may submit their
22 complaint to the attorney for the State for review.

23 If the juvenile community corrections officer makes a determination pursuant to
24 subsection 5, paragraph A or B and decides not to request the attorney for the State to file
25 a petition for a violation of Title 22, section 2389, subsection 2 or Title 28-A, section
26 2052, the juvenile community corrections officer shall inform the Secretary of State of
27 the violation. The Secretary of State shall suspend for a period of 30 days that juvenile's
28 license or permit to operate a motor vehicle, right to operate a motor vehicle and right to
29 apply for and obtain a license. After the suspension is terminated, any record of the
30 suspension is confidential and may be released only to a law enforcement officer or the
31 courts for prosecution of violations of Title 29-A, section 2412-A.

32 The attorney for the State on that attorney's own motion or upon receiving a request for
33 review by the law enforcement officer, the complainant or the victim, shall consider the
34 facts of the case, consult with the juvenile community corrections officer who made the
35 initial decision and then make a final decision as to whether to file the petition. The
36 attorney for the State shall notify the juvenile community corrections officer of the final
37 decision within 30 days of being informed by the juvenile community corrections officer
38 of the initial decision. If a juvenile community corrections officer has not yet made an
39 initial decision, the attorney for the State may file a petition at any time more than 30
40 days after the juvenile community corrections officer has been given notice pursuant to
41 section 3203-A.

42 If the attorney for the State files a petition, the court, upon the motion of the attorney for
43 the State, the motion of the juvenile or the court's own motion, may assign counsel for the
44 juvenile. The assignment must be reviewed at the juvenile's first appearance before the
45 court.

1 **Sec. 5. 15 MRSA §3306, sub-§1**, as amended by PL 2019, c. 525, §15, is further
2 amended to read:

3 **1. Notice and appointment.** The provisions of this subsection address a juvenile's
4 right to counsel.

5 A. At a juvenile's first appearance before the court, the juvenile and the juvenile's
6 parent or parents, guardian or legal custodian must be fully advised by the court of
7 their constitutional and legal rights, including the juvenile's right to be represented by
8 counsel at every stage of the proceedings. At every subsequent appearance before the
9 court, the juvenile must be advised of the juvenile's right to be represented by
10 counsel.

11 B. If the juvenile requests an attorney and if the juvenile and the juvenile's parent or
12 parents, guardian or legal custodian are found to be without sufficient financial
13 means, counsel must be appointed by the court.

14 C. The court may appoint counsel without a request under paragraph B if the court
15 determines representation by counsel necessary to protect the interests of the juvenile.

16 D. The court shall appoint counsel to represent the juvenile upon the entry of a
17 dispositional order that includes commitment to a Department of Corrections juvenile
18 correctional facility. A juvenile's right to counsel under this paragraph continues
19 until the juvenile is discharged from the disposition. Counsel appointed under this
20 paragraph may be in addition to the juvenile's primary counsel.

21 This subsection does not limit the court's authority to appoint counsel for a juvenile at any
22 time beginning with the detention of the juvenile under this Part.

23 **Sec. 6. 15 MRSA §3313, sub-§2, ¶F**, as amended by PL 2019, c. 474, §1 and c.
24 525, §26, is repealed and the following enacted in its place:

25 F. The juvenile has made or has agreed to pay restitution to the victim of the
26 juvenile's conduct for the damage or injury that the victim sustained in an amount that
27 the court has determined is within the juvenile's ability to pay pursuant to section
28 3314-C;

29 **Sec. 7. 15 MRSA §3313, sub-§2, ¶J**, as amended by PL 1979, c. 663, §119, is
30 further amended to read:

31 J. The juvenile is particularly likely to respond affirmatively to probation; ~~and~~

32 **Sec. 8. 15 MRSA §3313, sub-§2, ¶K**, as amended by PL 2019, c. 525, §26, is
33 further amended to read:

34 K. The confinement of the juvenile would entail excessive hardship to the juvenile or
35 the juvenile's dependents;

36 **Sec. 9. 15 MRSA §3313, sub-§2, ¶L** is enacted to read:

37 L. The juvenile had not attained 14 years of age at the time of the alleged conduct;
38 and

39 **Sec. 10. 15 MRSA §3313, sub-§2, ¶M** is enacted to read:

1 M. The juvenile crime would be considered a Class D or Class E crime if committed
2 by an adult and, based upon both the written agreement of the parties and a court
3 finding, the facts and circumstances of the underlying criminal episode giving rise to
4 the conviction did not generate probable cause to believe the juvenile had committed
5 what would be considered a Class A, Class B or Class C crime if committed by an
6 adult.

7 **Sec. 11. 15 MRSA §3315, sub-§3**, as amended by PL 2003, c. 503, §3, is further
8 amended to read:

9 **3. Court review of determination.** Whenever a court makes a determination
10 pursuant to section 3314, subsection 1, paragraph F or section 3314, subsection 2 that
11 reasonable efforts have been made to prevent or eliminate the need for removal of the
12 juvenile from the juvenile's home or that no reasonable efforts are necessary because of
13 the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B
14 and that continuation in the juvenile's home would be contrary to the welfare of the
15 juvenile, that determination must be reviewed by the court not less than once every 12
16 months until the juvenile is discharged or no longer residing outside the juvenile's home
17 or attains 18 years of age. This review does not affect a juvenile's commitment to a
18 Department of Corrections juvenile correctional facility.

19 A. A juvenile who has not attained 21 years of age must be represented by counsel at
20 a judicial review of the juvenile's commitment.

21 B. If an appropriate treatment or appropriate and less restrictive placement is not
22 being provided or offered to the juvenile, the court may order the Department of
23 Corrections or the Department of Health and Human Services, or both, to
24 demonstrate the reasonableness of the current treatment or placement provided or
25 offered.

26 **Sec. 12. 15 MRSA §3316, sub-§2, ¶A**, as repealed and replaced by PL 1999, c.
27 127, Pt. B, §6, is amended to read:

28 A. A commitment of a juvenile to a Department of Corrections juvenile ~~corrections~~
29 ~~correctional~~ facility pursuant to section 3314 must be for an indeterminate period not
30 to extend beyond the juvenile's 18th birthday unless the court expressly further limits
31 or extends the indeterminate commitment, as long as the court does not ~~limit the~~
32 ~~commitment to less than one year nor extend the commitment beyond a juvenile's~~
33 ~~21st birthday and as long as an order does not result in a commitment of less than one~~
34 ~~year, unless the commitment is for an indeterminate period not to extend beyond the~~
35 ~~juvenile's 21st birthday.~~ Nothing in this Part may be construed to prohibit the
36 provision to a juvenile following the expiration of the juvenile's term of commitment
37 of services voluntarily accepted by the juvenile and the juvenile's parent or parents,
38 guardian or legal custodian if the juvenile is not emancipated; except that these
39 services may not be extended beyond the juvenile's 21st birthday.

40 **Sec. 13. 15 MRSA §3317**, as amended by PL 1997, c. 752, §26 and PL 2003, c.
41 689, Pt. B, §§6 and 7, is further amended to read:

1 **§3317. Disposition after return to Juvenile Court**

2 In instances of commitment of a juvenile to the Department of Health and Human
3 Services or a Department of Corrections juvenile correctional facility or when the
4 juvenile is under a specified period of probation, the Commissioner of Health and Human
5 Services or the commissioner's designee or the Commissioner of Corrections or the
6 commissioner's designee, or the juvenile following the disposition may for good cause
7 petition the Juvenile Court having original jurisdiction in the case for a judicial review of
8 the disposition, including extension or reduction of the period of commitment or period of
9 probation. For a petition initiated by the juvenile, the Department of Health and Human
10 Services or the Department of Corrections shall provide information including, but not
11 limited to, the information in reports required for periodic review pursuant to section
12 3315. In all cases in which a the juvenile is returned to a Juvenile Court, the Juvenile
13 Court may make any of the dispositions otherwise provided in section 3314, including a
14 reduction of the period of commitment or probation, and Title 34-A, section 3805,
15 subsection 2. When reviewing a commitment to the Department of Health and Human
16 Services, the court shall consider efforts made by the Department of Corrections and the
17 Department of Health and Human Services to reunify the juvenile with the juvenile's
18 parents or custodians, shall make a finding regarding those efforts and shall return
19 custody of the juvenile to a parent or legal custodian if the return of the juvenile is not
20 contrary to the welfare of the juvenile. A petition for judicial review of a disposition
21 committing the ~~child~~ juvenile to the Department of Health and Human Services must be
22 served on the parents at least 7 days prior to the hearing. Absent extraordinary
23 circumstances, the juvenile may file a petition no more than once every 180 days.

24 **Sec. 14. 15 MRSA §3402, sub-§1**, as amended by PL 2015, c. 100, §3, is further
25 amended to read:

26 **1. Matters for appeal.** Appeals of the following matters may be taken from the
27 ~~juvenile court~~ Juvenile Court to the Supreme Judicial Court by a party specified in
28 subsection 2:

- 29 A. An adjudication, as long as the appeal is taken after an order of disposition;
- 30 B. An order of disposition, or of any subsequent order modifying disposition, for an
31 abuse of discretion; ~~and~~
- 32 D. A detention order entered pursuant to section 3203-A, subsection 5 or any refusal
33 to alter a detention order upon petition of the juvenile pursuant to section 3203-A,
34 subsection 11, for abuse of discretion, ~~provided that the.~~ The appeal must be handled
35 expeditiously; ~~and~~
- 36 H. A judicial review decision, pursuant to section 3317.

37 **Sec. 15. 15 MRSA §3405, sub-§2**, as amended by PL 2015, c. 100, §5, is further
38 amended to read:

39 **2. Record on appeals.** In appeals taken pursuant to section 3402, subsection 1,
40 paragraphs A ~~and~~, B ~~and~~ H, review must be on the basis of the record of the proceedings
41 in ~~juvenile court~~ the Juvenile Court. In the interest of justice, the Supreme Judicial Court
42 may order that the record consist of:

- 1 A. The untranscribed sound recording of the proceedings; or
- 2 B. An agreed or settled statement of facts with the consent of the parties.

3 **Sec. 16. 34-A MRSA §3805, sub-§1**, as amended by PL 1999, c. 583, §31, is
4 further amended to read:

5 **1. Eligibility.** Only a juvenile, as defined in Title 15, section 3003, subsection 14,
6 who is 11 years of age or older at the time of commitment may be committed to the
7 facility pursuant to this subchapter and Title 15, Part 6.

8 This subsection is repealed October 1, 2021.

9 **Sec. 17. 34-A MRSA §3805, sub-§1-A** is enacted to read:

10 **1-A. Eligibility.** Beginning October 1, 2021, only a juvenile, as defined in Title 15,
11 section 3003, subsection 14, who is 12 years of age or older at the time of commitment
12 may be committed to the facility pursuant to this subchapter and Title 15, Part 6.

13 **Sec. 18. Appropriations and allocations.** The following appropriations and
14 allocations are made.

15 **CORRECTIONS, DEPARTMENT OF**

16 **Long Creek Youth Development Center 0163**

17 Initiative: Establishes and provides funding for one Assistant Classifications Officer
18 position due to an anticipated increase in the number of trips to the court system.

19	GENERAL FUND	2019-20	2020-21
20	POSITIONS - LEGISLATIVE COUNT	0.000	1.000
21	Personal Services	\$0	\$43,567
22			
23	GENERAL FUND TOTAL	\$0	\$43,567

24 **Long Creek Youth Development Center 0163**

25 Initiative: Provides funding for 16 hours of anticipated overtime to transport officers for
26 an anticipated increase in the number of trips to the court system.

27	GENERAL FUND	2019-20	2020-21
28	Personal Services	\$0	\$28,163
29			
30	GENERAL FUND TOTAL	\$0	\$28,163

31 **Long Creek Youth Development Center 0163**

32 Initiative: Provides funding for one additional transportation vehicle.

1	GENERAL FUND	2019-20	2020-21
2	All Other	\$0	\$2,640
3			
4	GENERAL FUND TOTAL	\$0	\$2,640

5	CORRECTIONS, DEPARTMENT OF		
6	DEPARTMENT TOTALS	2019-20	2020-21
7			
8	GENERAL FUND	\$0	\$74,370
9			
10	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$74,370

12 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
 13 section number to read consecutively.

14 **SUMMARY**

15 This amendment replaces the bill and does the following.

16 1. It amends the definition of "juvenile" as used in the Maine Juvenile Code to
 17 include a person 18 years of age or older who had been adjudicated as a juvenile during
 18 the period of a disposition that includes probation and commitment to the Department of
 19 Corrections beyond that person's 18th birthday.

20 2. It establishes that the Juvenile Court has jurisdiction over proceedings in which a
 21 juvenile had attained 12 years of age at the time of the offense, effective October 1, 2021.

22 3. It requires the Juvenile Court to assign counsel to a juvenile when a detention
 23 order is reviewed.

24 4. It authorizes the Juvenile Court to appoint counsel for a juvenile upon the filing of
 25 a petition.

26 5. It requires the Juvenile Court to appoint counsel upon a disposition ordering a
 27 juvenile to the Department of Corrections juvenile correctional facility, but permits the
 28 court to appoint counsel at any point beginning with the juvenile's detention.

29 6. It adds 2 considerations that must be accorded weight against ordering placement
 30 in a secure facility: whether the juvenile was under 14 years of age at the time of the
 31 crime; and whether the adjudication is for a juvenile crime that would be a Class D or E
 32 crime if it were an adult crime and was not reduced from a crime that was charged as
 33 Class A, B or C.

34 7. It adds to the already existing review in the Maine Revised Statutes, Title 15,
 35 section 3315 a requirement that the juvenile have counsel. It allows courts to require the
 36 Department of Corrections, the Department of Health and Human Services, or both, to
 37 demonstrate the reasonableness of the current treatment or placement provided or offered
 38 if an appropriate treatment or an appropriate less restrictive alternative placement is not
 39 being provided. It also allows such judicial reviews for individuals who are 18 to 20
 40 years of age.



129th MAINE LEGISLATURE

LD 1684

LR 1572(02)

An Act To Clarify the Right to Counsel for Juveniles and Improve Due Process for Juveniles

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

	FY 2019-20	FY 2020-21	Projections FY 2021-22	Projections FY 2022-23
Net Cost (Savings)				
General Fund	\$0	\$74,370	\$151,265	\$156,615
Appropriations/Allocations				
General Fund	\$0	\$74,370	\$151,265	\$156,615

Correctional and Judicial Impact Statements

This bill will neither increase nor decrease the number of new cases.

This bill may increase administrative costs and the workload of judicial and clerk staff, but the Courts do not require additional funding at this time.

Fiscal Detail and Notes

The bill makes several changes to the laws regarding the Right of Counsel and Due Process for Juveniles. As a result of these changes, the Department of Corrections (DOC) anticipates it will make two additional trips per week transporting juveniles to and from the court system. The bill includes a General Fund appropriation to the DOC of \$74,370 in fiscal year 2020-21 to fund an additional assistant classifications officer, overtime pay for transport officers and funding for one additional transportation vehicle.

Any additional costs to the Maine Commission on Indigent Legal Services as a result of this bill are expected to be minor and can be absorbed within existing budgeted resources.